



April 19, 2007

H.R. 1495 - Water Resources Development Act of 2007

Floor Situation

H.R. 1495 is being considered on the floor pursuant to a structured rule. The rule:

- Provides one hour of general debate equally divided and controlled by the Chairman and Ranking Minority Member of the Committee on Transportation and Infrastructure.
- Waives all points of order against consideration of the bill except those arising under clauses 9 (earmarks) and 10 (PAYGO) of Rule XXI.
- Makes in order only those amendments printed in the Rules Committee report.
- Provides that, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to a time designed by the Speaker.
- Provides one motion to recommit with or without instructions.

This legislation was introduced by Representative James Oberstar (D-MN) on March 13, 2007. The bill was ordered to be reported, as amended, from the Committee on Transportation and Infrastructure Committee, by voice vote, on March 15, 2007.

H.R. 1495 is expected to be considered on the floor on April 19, 2007.

Background

The Water Resources Development Act (WRDA) authorizes water resources studies and projects and has traditionally been re-authorized every two years. The last authorization, however, was signed into law in 2000. During the 109th Congress, WRDA authorization (H.R. 2864) was considered by the House of Representatives and passed by a recorded vote of 406-14 on July 14, 2005 ([Roll no. 378](#)). The bill then passed the Senate, with an amendment, by voice vote. Conferees were appointed but no conference report was filed.

The Army Corps of Engineers receives its civil works authorization through WRDA. By Congressional direction, the Corps of Engineers designs, constructs, and maintains water

resources facilities in the U.S. WRDA also gives the Corps the right to study water issues, and, more recently, to restore ecosystems.

Summary

Title I – Water Resource Projects

This title authorizes 43 water projects and 98 different small projects. The Secretary of the Army (“the Secretary”) is also provided with the authority to carry out any of the small projects that are deemed to be “feasible” in the project study. Existing authorizations from numerous laws (listed below) provide funds to carry out these projects even though they are not specifically authorized by Congress.

The provisions within Title I:

- Authorize 43 projects that have a Report of the Chief of Engineers (US Army Corps of Engineers) and includes the overall project cost as well as the federal and non-federal cost (for a complete list of projects, see section 1001).
- Require the Secretary to carry out 31 small projects for flood damage reduction (listed in section 1002) if the project is “feasible.”

**Note: The Flood Control Act of 1948 authorizes \$50 million each year for small projects for flood damage reduction that were not authorized by Congress. No individual project can receive more than \$7 million under this statute.*

- Require the Secretary to carry out 16 small projects for emergency streambank protection (listed in section 1003) if the project is “feasible.” The projects seek to prevent damage to highways, bridge approaches, public works, churches, hospitals, schools, and non-profit public services.

**Note: The Flood Control Act of 1946 authorizes \$15 million each year for small projects for emergency streambank protection that were not specifically authorized by Congress. No individual project can receive more than \$1 million under this statute.*

- Require the Secretary to carry out 9 small projects for navigation (listed in section 1004).

**Note: The River and Harbor Act of 1960 authorizes \$35 million for small projects for navigation that were not specifically authorized by Congress.*

- Require the Secretary to carry out 7 small projects for improvement of the quality of the environment (listed in section 1005) if the project is “feasible.”

**Note: The Water Resources Act of 1986 authorizes \$25 million for small projects for improvement of the quality of the environment that were not specifically authorized by Congress. No individual project can receive more than \$5 million and the non-federal share of these projects is 25%.*

- Require the Secretary to carry out 27 small projects for aquatic ecosystem restoration if the project is “feasible.”

**Note: The Water Resources Development Act of 1986 authorizes \$25 million for small projects for aquatic ecosystem restoration that were not specifically authorized by Congress. No individual project can receive more than \$5 million and the non-federal share of these projects is 35%.*

- Require the Secretary to carry out 7 small projects for shoreline protection (listed in section 1007) if the project is “feasible.”

**Note: In accordance with 33 U.S.C. 426g, \$30 million is authorized for small projects for shoreline protection that were not specifically authorized by Congress. No individual project can receive more than \$3 million.*

- Require the Secretary to carry out one small project for snagging and sediment removal (listed in section 1008) if the project is “feasible.”

**Note: The Flood Control Act of 1937 authorizes \$7.5 million for small projects for snagging and sediment removal. No individual project can receive more than \$500,000.*

Title II – General Provisions

This title focuses on Army Corps of Engineers reforms, including the implementation of a peer review process, adjustments in partnership agreements, project streamlining, and a variety of other changes to current processes.

This section:

- Prohibits the Secretary from soliciting contributions (in excess of the non-federal share) from non-Federal entities for flood control projects.
- Requires the non-federal interest of a harbor project to pay 25% of construction costs of the portion of the project that has a depth between 20 and 53 feet.

**Note: Current law (33 U.S.C 3311(a)(1)) requires this payment for the portion of the project that has a depth between 20 and 45 feet.*

Additionally, the current federal share of operations and maintenance costs at each navigation project is 100%, except in a deep draft harbor. In such a case, the non-federal interest is required to pay 50% of excess costs that would be incurred on a 53 foot project.

**Note: Current law (33 U.S.C. 331(a)(1)) requires the non-federal interest to pay 50% of excess costs that would be incurred on a 45 foot project. According to the CBO, "the Corps is currently working on a few such projects around the country; the largest is in New York and New Jersey Harbor Area." The CBO estimates that this provision will cost \$400 million over the 2008-2012 period.*

- Extends the Shoreline Erosion Control Development and Demonstration Program to 10 years and extends the planning, design, and construction phase from 3 years to 6 years.

**Note: Current law (33 U.S.C. 426h(a)) provides for the demonstration program to last 7 years and the planning, design, and construction phase to last 3 years.*

- Adjusts the limit for individual Small Shore and Beach Restoration and Protection Projects from \$3 million to \$5 million.

**Note: Current law (33 U.S.C. 2330) authorizes \$30 million for Small Shore and Beach Restoration Projects, which are projects that are not individually authorized by Congress.*

- Increases the authorization for aquatic ecosystem restoration projects from \$25 million to \$40 million.
- Increases the authorization for small flood damage reduction projects from \$50 million to \$60 million.
- Increases the authorization for modification of projects for improvement of the quality of the environment from \$25 million to \$30 million.
- Requires non-Federal interests to enter into a partnership agreement with the Secretary, which includes: agreements to carry out requirements of the project, a provision for liquidated damages in the event of a failure to perform, and the value of in-kind contributions (planning, design, value of materials provided before the agreement, etc.). Additionally, this provision requires the issuance of guidelines that would delegate the following authorities to district engineers: approve policies in an agreement that have previously been approved by the Secretary, approve policies that have terms dictated in law, approve policies outlined in the Secretary's guidelines, and sign any partnership agreement unless the Secretary notifies the district engineer within 30 days that the Secretary would like to sign the agreement.

**Note: A partnership agreement is not required when the administrative costs associated with the agreement exceed the contribution from the non-Federal interest and are less than \$25,000. Additionally, this provision requires a Report to Congress within two years about the number of partnership agreements and requires all agreements to be made available to the public within 120 days.*

- Allows the Secretary to provide State and local governments (through a 50% cost share) with assessment, planning and design assistance for remediation, restoration and reuse that will contribute to the improvement of water quality or the conservation of water and related resources of drainage basins and watersheds.
- Allows the Secretary to enter into a partnership agreement for the acquisition, design, management, and construction of a dredged material processing, treatment, and contaminant reduction or disposal facility.
- Requires the Secretary to consider the use of a mitigation bank when carrying out a water resources project in the same watershed as a mitigation bank.
- Requires that mitigation plans for fish and wildlife losses created by a water resources project include: description and rationale for the actions taken to achieve mitigation objectives, a description of the lands to be acquired for the mitigation, characteristics of the habitat being restored, success criteria for mitigation, and a plan for monitoring in order to determine the success of the mitigation. Additionally, this provision requires an annual report from the President on the status of construction of projects that require mitigation.

**Note: Current law (33 U.S.C. 2283(d)) requires mitigation plans prior to the Secretary submitting authorization proposals of water resources projects to Congress. These must include a specific plan to mitigate fish and wildlife losses created by the project. Current law only requires the plans to “reflect contemporary understanding of the science of mitigating the adverse environmental impacts of water resources projects.”*

- Allows the Secretary to recommend a project that is not justified solely by national economic benefits if the Secretary determines that: the community is at least 70 miles from the nearest surface accessible commercial port, the project would be located within a U.S. territory, over 80% of the goods transported in the harbor would be consumed by the local community, and the long-term viability of the community would be threatened without the project.
- Allows the Secretary to transport and place sediment at locations selected by a non-Federal entity for projects determined to be in the public interest. The Non-Federal interest is required to pay the non-Federal share of the construction and 100% of the construction costs associated with the project. Additionally, this provision authorizes \$30 million for such activity and provides seven specific locations as priorities for the use of dredged material (listed in section 2016).

**Note: If a project is less than \$750,000 and located in a disadvantaged community, the project may be carried out at Federal expense (limits total authorization for this provision to \$3 million).*

- Waives cost sharing requirements up to \$500,000 for studies and projects for U.S. territories, Indian country, and portions of Alaska.

**Note: Current law (33 U.S.C. 2310) waives cost share requirements up to \$200,000 for U.S. territories only.*

- Requires the Secretary to expedite the planning, design and construction of any project that has had flooding within the last five years, which has resulted in loss of life and caused a major disaster declaration.
- Adds five priority locations for selecting river basins and watersheds for assessments, and changes the non-Federal cost share to 25%.

**Note: Current law requires a 15% cost share for non-Federal entities.*

- Includes the Secretary on a list of agencies that are allowed to enter in contracts with local government entities for fire suppression and detection.
- Allows 100% of the non-federal cost share for technical assistance with comprehensive plans to be in-kind.

**Note: Under current law (42 U.S.C. 1962d-16), 50% of the non-federal share may be in-kind.*

- Allows no more than \$1 million for technical assistance with comprehensive plans to be spent in one state annually.

**Note: Under current law (42 U.S.C. 1962d-16) no more than \$500,000 could be spent in one state annually.*

- Authorizes \$5 million for technical assistance and prohibits more than \$2 million annually to be used to enter agreements with nonprofit organizations to provide assistance to rural and small communities.
- Requires that the Secretary initiate procedures to establish a schedule for consolidating environmental assessments, issuance of permits and project reviews by all appropriate agencies after a non-Federal interest submits a written notice of intent to construct or modify a non-Federal water supply, waste water infrastructure, flood damage reduction, storm damage reduction, ecosystem restoration or navigation projects.

The Secretary is required to publish the appropriate notice in the Federal Register within 15 days of receiving the written notice from the non-Federal interest. Agencies and governments that intend to enter into a memorandum of agreement must notify the Secretary within 30 days of the publication. The memorandum of agreement shall be entered into within 90 days of the original notice.

The agreement shall include consolidated reviews, hearing and comment periods, the non-Federal interests' responsibilities for data development, and environmental reviews.

Within three years, the Secretary is required to submit a report to Congress estimating the time required for the issuance of all permits.

- Allows the Secretary to enter into cooperative agreements with non profit groups for design and construction of a wetlands restoration project, but prohibits the Secretary from obligating more than \$1 million to a non profit for a single project (limits total authorization to \$5 million annually to non profits).
- Allows individuals not employed by the Army to participate in training classes, but they are required to pay the full price of the training.

**Note: According to the CBO, "the Corps would collect and spend less than \$500,000 during each year" under this provision.*

- Requires the Secretary to provide the public with access to water quality data, water resource models, and analytical techniques and authorizes \$5 million per fiscal year to provide this data to the public.
- Provides a statement of policy: "it is the policy of the United States to promote beach renourishment for the purpose of flood damage reduction and hurricane storm damage reduction..." Additionally, the bill provides priority for carrying out this policy for areas that have received a Federal investment and where there is a need for Federal activities.
- Changes the date for the development of criteria and procedures regarding a non-Federal interest's ability to pay to September 30, 2007.
- Allows a plan other than the one that maximizes the net national economic benefits if an alternative plan achieves the project purposes while providing greater ecosystem restoration.
- Allows a plan other than the one that maximizes net national ecosystem restoration benefits if an alternative is feasible and achieves the project purposes while providing greater economic development benefits.

- Requires a peer review of a project that has an estimated total cost of more than \$50 million or the Governor requests an independent peer review. Additionally, the Chief of Engineers may require a peer review if the head of a Federal or state agency requests a peer review or if the Chief of Engineers determines that the project is controversial. The peer review panels shall be a Federal expense and cannot be more than \$500,000 (which can be waived by the Chief of Engineers). Reports to Congress are required upon the execution of a peer review.

**Note: This provision also includes a list of projects (listed in section 2037) that are exempted from peer reviews. A peer review panel will be composed of “independent experts who represent a balance of areas of expertise suitable for the review being conducted.”*

Title III – Project-Related Provisions

This title includes 116 project-related provisions and modifications requested by Members that range from changes in authorization levels to adjustments in project instructions. For a complete list of project-related provisions, see Title III.

Title IV – Studies

This title includes 83 studies of projects throughout the country. For a complete list of studies, see Title IV.

Title V – Miscellaneous

This title contains 117 project-specific miscellaneous provisions. For a complete list of these provisions, see Title V.

Title VI – Florida Everglades

This title includes provisions that make adjustments to the restoration of the Florida Everglades.

This title:

- Adjusts provisions of the Hillsboro and Okeechobee Aquifer, including a modification to the total cost of the project to \$42,500,000.

**Note: This project was authorized in the Water Resources Development Act of 1999.*

- Authorizes the following three restoration projects: Indian River Lagoon, Picayune Strand and Site 1 Impoundment.
- Authorizes the Modified Water Deliveries Project at a total cost of \$144,131,000.

- De-authorizes the uncompleted portions of three restoration projects.

Title VII – Louisiana Coastal Area

- Requires the Secretary to develop a comprehensive plan (and submit to Congress within one year) for protecting and restoring the coastal Louisiana ecosystem. This plan is required to be integrated into the comprehensive hurricane protection study, which was authorized in the 2006 Energy and Water Appropriations Act (PL 109-103). Additionally, the plan should be consistent with the Comprehensive Coastal Protection Master Plan, which was passed by the Louisiana State Legislature in 2005.

The comprehensive plan must include: the role of federal and state agencies, the means of integrating a new technology, ecological success criteria, proposed projects that could contribute to the protection of coastal wetlands and flood protection of communities, and the framework of a long-term program that is integrated with the hurricane and storm damage reduction, flood damage reduction and navigation activities that provide for comprehensive protection, conservation and restoration.

- Allows the Secretary to carry out an ecosystem restoration for the Louisiana Coastal Area. Additionally, this provision provides priorities for carrying out the program (priorities are listed in section 7003).

**Note: The Secretary is also required to review all authorized projects in the coastal Louisiana ecosystem to determine whether the project needs to be modified to comply with this provision.*

- Creates the Coastal Louisiana Ecosystem Protection and Restoration Task Force, which includes the Secretary, Secretary of the Interior, Secretary of Commerce, Administrator of the Environmental Protection Agency, Secretary of Agriculture, Secretary of Transportation, Secretary of Energy and the Director of the Federal Emergency Management Agency (FEMA), Commandant of the Coast Guard, Coastal Advisor to the Governor, Secretary of the Louisiana Department of Natural Resources, and a Representative of the Governor's Advisory Panel on Coastal Restoration and Conservation.

The Task Force may establish working groups and must make recommendations to the Secretary: (1) policies and plans for addressing conservation, protection, restoration and maintenance of the Coastal Louisiana ecosystem, (2) financial participation of the agencies represented on the Task Force in protection, restoration and maintenance of the Louisiana ecosystem, and (3) the comprehensive plan (described above).

- Authorizes \$100 million for construction for a Louisiana ecosystem program. Individual projects within this program can not exceed \$25 million. Authorizes additional projects (listed in section 7006).
- Requires the Secretary to establish the Louisiana Water Resources Council, which will be a peer review panel for projects within this title.
- Expedites completion of eight reports (listed in section 7010).
- Authorizes the Secretary to raise levee heights and enhance the Lake Pontchartrain and Vicinity Project and the West Bank and Vicinity Project to provide levels of protection needed to achieve certification required for participation in the National Flood Insurance Act of 1965. Additionally, authorizes the Secretary to make other modifications to the New Orleans vicinity in order to increase flood protection.
- De-authorizes the Mississippi River Gulf Outlet and requires a study project to modify the Mississippi River-Gulf Outlet and authorizes \$5 million for the costs of the study and report.

Title VIII – Upper Mississippi River and Illinois Waterway System

- Requires the Secretary to undertake navigation improvements and restoration of the ecosystem for the Upper Mississippi River and Illinois Water System.
- Authorizes \$235 million for the Secretary to construct certain mooring facilities, provide switchboats at specific locks and conduct development and testing of an appointment scheduling system.
- Authorizes \$1.795 billion for the Secretary to construct new 1,200 foot locks at five locations.
- Authorizes \$1.58 billion for the Secretary to carry out ecosystem restoration projects and outlines 14 projects that may be included (listed in section 8004).

Amendments Made in Order Pursuant to the Rule (10 minutes each)

Rep. Oberstar (D-MN) #1 The manager's amendment authorizes and modifies several Corps of Engineers' projects and studies for flood control, navigation, and environmental restoration.

Rep. Boswell (D-IA) #2 The amendment provides the Rathbun Regional Water Association with a right of first refusal to purchase water supply storage from the Corps of Engineers at Rathbun Lake, Iowa.

Rep. Rohrabacher (R-CA) #3 The amendment permits ports to levy a fee on containers and use that fee to pay for security and infrastructure at the ports.

Rep. Stupak (D-MI) #4 The amendment requires that all harbor maintenance is funded based on FY2004 standards, regardless of the amount of tonnage a harbor handles.

Reps. Blumenauer (D-OR)/Welch (D-VT) #5 The amendment would strike section 2036 of the legislation and replace it with language directing the Secretary of the Army to update the principles and guidelines that the Army Corps of Engineers uses in the formulation, evaluation, and implementation of water resources projects. The amendment would require the Secretary to consult with other agencies and the public in developing the new principles and guidelines.

Rep. Hastings (R-WA) #6 The amendment provides union workers at Army Corps hydropower dams ability to participate in wage surveys.

Rep. Kirk (R-IL) #7 The amendment authorizes the U.S. Army Corps of Engineers to carry out a small dam removal or rehabilitation project if it will improve the quality of the environment or is in the public interest. It requires a non-Federal cost-share of 35% for any construction and 100% for operation and maintenance. It authorizes \$25,000,000 for this program with no more than \$5,000,000 to be used for any one project.

Cost

“Assuming appropriation of the necessary amounts, including adjustments for increases in anticipated inflation, CBO estimates that implementing H.R. 1495 would cost about \$6.7 billion over the 2008-2012 period and an additional \$6.5 billion over the 10 years after 2012. (Some construction costs and operations and maintenance would continue or commence after those first 15 years.)”

Additional Views

“As reported by the House Transportation and Infrastructure Committee, H.R. 1495, the Water Resources Development Act (WRDA) of 2007, would increase the cost to the Federal government by 50 percent or more relative to the House-passed WRDA from the 109th Congress. The Administration estimates that it would cost at least \$15 billion and possibly substantially more to implement the hundreds of new projects and programs that H.R. 1495 contains. The bill would increase the Federal cost-share for many projects, authorize projects outside of the Army Corps of Engineers’ (Corps) mission, and not ensure that projects yield high economic and environmental returns. In a time of much-needed fiscal restraint, the additional spending in this bill is unacceptable. For these reasons, the Administration strongly opposes H.R. 1495 in its current form.” Statement of Administration Policy on H.R. 1495 issues on April 18, 2007.

Staff Contact

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